

2023 -- S 0956

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS

Introduced By: Senators de la Cruz, Rogers, Lombardo, Tikoian, Ciccone, Raptakis,  
Burke, Pearson, and E Morgan

Date Introduced: May 01, 2023

Referred To: Senate Health & Human Services

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 23-17.5-33 of the General Laws in Chapter 23-17.5 entitled "Rights  
2 of Nursing Home Patients" is hereby amended to read as follows:

3           **23-17.5-33. Minimum staffing level compliance and enforcement program.**

4           **(a) Compliance determination.**

5           (1) The department shall submit proposed rules and regulations for adoption by October  
6 15, 2021, establishing a system for determining compliance with minimum staffing requirements  
7 set forth in § 23-17.5-32.

8           (2) Compliance shall be determined quarterly by comparing the number of hours provided  
9 per resident, per day using the Centers for Medicare and Medicaid Services' payroll-based journal  
10 and the facility's daily census, as self-reported by the facility to the department on a quarterly basis.

11           (3) The department shall use the quarterly payroll-based journal and the self-reported  
12 census to calculate the number of hours provided per resident, per day and compare this ratio to the  
13 minimum staffing standards required under § 23-17.5-32. Discrepancies between job titles  
14 contained in § 23-17.5-32 and the payroll-based journal shall be addressed by rules and regulations.

15           **(b) Monetary penalties.**

16           (1) The department shall submit proposed rules and regulations for adoption on or before  
17 October 15, 2021, implementing monetary penalty provisions for facilities not in compliance with  
18 minimum staffing requirements set forth in § 23-17.5-32.

19           (2) Monetary penalties shall be imposed quarterly and shall be based on the latest quarter

1 for which the department has data.

2 (3) No monetary penalty may be issued for noncompliance with the increase in the standard  
3 set forth in § 23-17.5-32(c)(ii) from January 1, 2023, to March 31, 2023. If a facility is found to be  
4 noncompliant with the increase in the standard during the period that extends from January 1, 2023,  
5 to March 31, 2023, the department shall provide a written notice identifying the staffing  
6 deficiencies and require the facility to provide a sufficiently detailed correction plan to meet the  
7 statutory minimum staffing levels.

8 (4) Monetary penalties shall be established based on a formula that calculates on a daily  
9 basis the cost of wages and benefits for the missing staffing hours.

10 (5) All notices of noncompliance shall include the computations used to determine  
11 noncompliance and establishing the variance between minimum staffing ratios and the  
12 department's computations.

13 (6) The penalty for the first offense shall be two hundred percent (200%) of the cost of  
14 wages and benefits for the missing staffing hours. The penalty shall increase to two hundred fifty  
15 percent (250%) of the cost of wages and benefits for the missing staffing hours for the second  
16 offense and three hundred percent (300%) of the cost of wages and benefits for the missing staffing  
17 hours for the third and all subsequent offenses.

18 (7) For facilities that have an offense in three (3) consecutive quarters, EOHHS shall deny  
19 any further Medicaid Assistance payments with respect to all individuals entitled to benefits who  
20 are admitted to the facility on or after January 1, 2022, or shall freeze admissions of new residents.

21 (c)(1) The penalty shall be imposed regardless of whether the facility has committed other  
22 violations of this chapter during the same period that the staffing offense occurred.

23 (2) The penalty may not be waived except as provided in subsection (c)(3) of this section,  
24 but the department shall have the discretion to determine the gravity of the violation in situations  
25 where there is no more than a ten percent (10%) deviation from the staffing requirements and make  
26 appropriate adjustments to the penalty.

27 (3) The department is granted discretion to waive the penalty when unforeseen  
28 circumstances have occurred that resulted in call-offs of scheduled staff. This provision shall be  
29 applied no more than two (2) times per calendar year.

30 (4) Nothing in this section diminishes a facility's right to appeal pursuant to the provisions  
31 of chapter 35 of title 42 ("administrative procedures").

32 (d)(1) Pursuant to rules and regulations established by the department, funds that are  
33 received from financial penalties shall be used for technical assistance or specialized direct care  
34 staff training.

1           (2) The assessment of a penalty does not supplant the state’s investigation process or  
2 issuance of deficiencies or citations under this title.

3           (3) A notice of noncompliance, whether or not the penalty is waived, and the penalty  
4 assessment shall be prominently posted in the nursing facility and included on the department’s  
5 website.

6           [\(e\) Any penalty incurred for any offense committed during calendar year 2022 pursuant to](#)  
7 [§§ 23-17.5-32, and 23-17.5-33, shall be abated.](#)

8           SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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RELATING TO HEALTH AND SAFETY -- RIGHTS OF NURSING HOME PATIENTS

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- 1           This act would amend the law on nursing home minimum staffing requirements in order
- 2   that any penalty incurred during calendar year 2022 would be abated.
- 3           This act would take effect upon passage.

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